

DARRYL DEVON GASTON,  
)  
Petitioner,  
)  
v.  
)  
UNITED STATES OF AMERICA,  
)  
Respondent.  
)

1:15CV1031  
1:06CR310-1

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The Recommendation was served on the parties to this action on April 28, 2016 (Doc. 170). Petitioner timely filed objections (Doc. 171) to the Recommendation.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objections were made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

**IT IS THEREFORE ORDERED** that the Magistrate Judge's Recommendation (Doc. 169) is **ADOPTED**. **IT IS FURTHER ORDERED** that Petitioner's "Motion to Dismiss Criminal History Enhancement Pursuant to 18 U.S.C. § 3742" (Doc. 165) is treated as a motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255, that the arguments contained in Petitioner's "Motion for Voluntary Dismissal of § 2255" (Doc. 168) are treated as part of the § 2255 Motion, that Petitioner's request for a ruling in his

Motion to Compel (Doc. 172) is **DENIED AS MOOT**, and that this action is **DISMISSED WITHOUT PREJUDICE** to Petitioner filing a corrected motion on the proper § 2255 forms, correcting the defects set out in the Order and Recommendation. A Judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 21st day of July, 2016.

  
United States District Judge